

VIA EMAIL

December 12, 2023

Lead Counsel for Plaintiffs
& Co-Lead Counsel for Plaintiffs

Re: *Camp Lejeune Water Litigation – Discovery Updates*

Counsel:

This letter is (1) in response to your December 4, 2023, Letter; (2) in response to the non-ESI document discussions during the meet and confers held on December 4, and December 8, 2023; and (3) the status conference hearing held on December 5, 2023. An e-mail pertaining to ESI-related meet and confers will be sent separately.

Production of Documents

As of today, the United States has produced more than 5,000 documents consisting of 300,000 pages in response to Plaintiffs' Corrected First Request for Productions. In addition to the documents already produced, the United States continues its efforts to collect and produce responsive documents and information as outlined below. Furthermore, per Plaintiffs' request in your December 4, 2023 letter, the United States is drafting a chart that lists each Request and the bates ranges for related, produced documents. We will produce that to Plaintiffs within the next week.

As you will see below, the United States has completed its production of documents for several of the Requests and has provided as much detail as possible for production deadlines for the remaining Requests. As the United States has reiterated many times, the United States is working diligently with multiple agencies to respond as quickly as possible to Plaintiffs' broad discovery requests – many of which request documents spanning decades. Producing documents on a rolling basis, as the United States has done here, is typical for cases involving the breadth and scope of the documents sought in this litigation. The Federal Rules of Civil Procedure specifically allow a responding party to produce documents within a "reasonable time." Fed. R. Civ. P. 34(b)(2)(B). Considering the very short discovery window in place in this case, agreeing to produce documents by the end of discovery should certainly be considered "reasonable."

Request No. 1 (RFP Set No. 1): Datasets 1, 2, 3, 5, and 6 were previously produced in their native format to give Plaintiffs access to the relevant data as expeditiously as possible. The United States has been processing those datasets to comply with the relevant ESI Protocol requirements. The newly processed versions of these datasets will be produced to Plaintiffs within the next week.

Further, and as Haroon Anwar indicated in his December 8, 2023 email to Kevin Dean, ATSDR has confirmed that it does not have the ATSDR CHAMPS (Career History Archival Medical and Personnel System) dataset in any file format aside from how it was

already produced. An ESI-compliant version of the CHAMPS database will be produced to Plaintiffs within the next week as well.

Request No. 2 (RFP Set No. 1): We have been informed that NARA has just received documents responsive to this Request from Ancestry.com and is diligently working to make them available to Plaintiffs. As of now, NARA is working towards a goal of sharing documents received from Ancestry.com, consisting of approximately 155,076 total images, by December 20, 2023. These files will be uploaded to NARA's AWS account in their native format, and as received by Ancestry.com. NARA anticipates providing a link for Plaintiffs to download the files directly in this format. NARA will then work to organize these files and make them available for public access through NARA's online Catalog at catalog.archives.gov.

In an ongoing effort to be transparent about its document production efforts, the United States attaches a spreadsheet provided by Ancestry.com that purportedly contains the file listing of the documents turned over by Ancestry.com.

Request No. 3 (RFP Set No. 1): The United States Marine Corps is continuing with its server restoration work and is coordinating with Dell Engineers to gain access to these records. The United States is receiving weekly updates relating to these efforts and will continue to share these with Plaintiffs as the work proceeds. As of today, the Marine Corps was able to get the server online, but they have not yet been able to access the relevant records. Strenuous efforts to do so are ongoing.

A separate digitization effort, potentially concerning the muster rolls on the server as well as other records, is currently ongoing. The Marine Corps anticipates having records available for processing and production on a rolling bases beginning in early 2024.

As was communicated during the meet and confer on December 8, 2023, there are no “licensing” issues related to the server in question. That was an inadvertent miscommunication early in the investigation of the server and warrants no further discussion.

Request No. 4 (RFP Set No. 1): The United States has produced all requested documents in response to this Request, which asked for documents “previously produced by Defendant in the matter styled as *In re Camp Lejeune, North Carolina Water Contamination Litigation*, MDL No. 2218.” The United States produced responsive documents, including the relevant privilege log, as produced in the MDL litigation. Since then, the United States has produced supplemental documents from the United States Marine Corps (USMC) previously withheld under the deliberative process privilege. As we have previously noted, ATSDR is reviewing the prior privilege log to determine whether they still intend to assert the deliberative process privilege over certain entries on the log.

Request No. 5 (RFP Set No. 1): The United States will be producing supplemental records responsive to this request by Friday, December 15th, 2023, including records indicated in Plaintiffs' letter dated December 4, 2023

Request No. 6 (RFP Set No. 1): The United States has produced expert reports and declarations produced by the United States from all prior civil actions involving allegations of injury due to exposure to TCE, PCE, and/or benzene at Camp Lejeune. The United States objects to producing other non-produced reports or declarations. Locating such documents, to the extent they exist, would (i) be overly burdensome; (ii) not necessarily lead to the discovery of relevant information; and (iii) likely involve a large number of privileged drafts and communications.

Request No. 7 (RFP Set No. 1): The United States has produced all non-privileged documents, as well as those documents previously withheld under the deliberative process privilege, included within the “CLW” database as of Friday, December 5, 2023. Bates ranges for the initial production include CLJA-CLW-0000000001 – CLJA_CLW-0000008790. Bates ranges for those records initially withheld under the deliberative process privilege include CLJA_CCLWDPP-0000000001 - CLJA_CLWDPP-0000000062.

Request No. 8 (RFP Set No. 1): ATSDR is diligently reviewing potentially relevant, non-privileged documents in response to this Request. The agency understands the urgency of this process, and the United States will begin producing responsive, relevant documents as soon as they are available. We will update you with a more-specific timeframe as soon as more information is available.

Request No. 9 (RFP Set No. 1): The United States has produced all records corresponding to this Request, in compliance with the ESI Protocol and Production Specifications, as of Friday, December 8, 2023. Bates ranges for this production are CLJA_Housing-0000000001 - CLJA_Housing-0000238064.

Request No. 10 (RFP Set No. 1): The United States is working with the USMC to produce these records. The United States is attaching an index of the “UST Portal” files with this letter. In addition to the UST Portal files, the United States has identified electronic UST petroleum cleanup-related files. These files are captured in a Camp Lejeune Official Document Inventory (“ODI”). Documents in this inventory were tracked by program area beginning in 2015. The United States will begin producing documents within the next few weeks.

Request No. 11 (RFP Set No. 1): The United States will be producing documents responsive to this request by the end of December 2023. In addition, and as stated in the United States’ original Response to Request No. 11, Plaintiffs are directed to the VA’s M21-1 Adjudication Procedures Manual, which is publicly available at https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000073398/M21-1-Adjudication-Procedures-Manual-Table-of-Contents.

Request No. 13 (RFP Set No. 1): As we have previously stated, the United States has consulted with NAS/NRC counsel, who confirmed that NRC is an independent non-governmental entity and that a requesting agency does not have any right to NAS internal

documentation aside from the final report. We understand Plaintiffs have issued a subpoena for documents on the NRC.

Request No. 14 (RFP Set No. 1): The United States has produced documents collected by the Government Accountability Office (“GAO”) relating to the Camp Lejeune contamination bearing Bates stamp GAO 00001-06518. The United States continues to work with the GAO to produce any additional records responsive to this request, if any.

Request No. 15 (RFP Set No. 1): The United States is working with the EPA to identify responsive, non-privileged documents relating to this Request. The United States anticipates producing documents responsive to this request by the end of December 2023.

Request No. 16 (RFP Set No. 1): The United States is working with the Department of the Navy to identify responsive, non-privileged documents relating to this Request. We will update you with a more-specific timeframe as soon as more information is available.

Request No. 17 (RFP Set No. 1): The United States is currently processing documents responsive to this request and will produce these to Plaintiffs by the end of December 2023. The United States is making additional records available for inspection. Date ranges are provided below in the “LANTDIV Norfolk, VA” section.

Alexandria, VA Records Inspection

The United States, per its response to Request 3 in Plaintiffs’ first Request for Production will make these records available for inspection in Alexandria, VA. At least 10-days’ notice is requested for this inspection. The United States requests available dates, beginning in January 2024, from Plaintiffs to proceed.

Camp Lejeune UST Records Inspection

The United States, per the December 8, 2023, meet and confer, will make available to Plaintiffs the Camp Lejeune UST records beginning January 2024. Please provide available dates for this inspection.

LANTDIV Norfolk, VA Records Inspection

The United States, per its response to Request 17 in Plaintiffs’ first Request for Production will make these records available for inspection. The United States proposes the following date ranges for Plaintiffs to inspect records stored at LANTDIV in Norfolk, VA:

- January 2nd – January 4th
- January 8th – January 10th
- January 22nd – January 25th

Best Regards,

/s/ Patrick J. Ryan

Patrick J. Ryan

Trial Attorney

U.S. Department of Justice

Environmental Tort Litigation

Enclosures: As Stated

cc: Counsel of Record in *Camp Lejeune Water Litigation*